

INITIAL STATEMENT OF REASONS

SAN BERNARDINO COUNTY AGRICULTURAL COMMISSIONER Adoption of County Regulations pertaining to the application of pesticides at agricultural sites adjacent to schools.

SUMMARY OF PROPOSED ACTION/PESTICIDE REGULATORY PROGRAM ACTIVITIES AFFECTED

The San Bernardino County Agricultural Commissioner (CAC) proposes to adopt commissioner regulations. The pesticide regulatory program activities that will be affected by the proposal are those pertaining to timing, notification and the method of application for pesticides applied at agricultural sites adjacent to schools. In summary, the proposed action would require for commercial agricultural sites adjacent to schools:

1. Advance notification of the application of non-restricted pesticides.
2. Prohibit aerial application of pesticides.
3. Restrict the times certain types of pesticide application methods could be used.
4. Restrict the time when certain pesticides could be used based on their toxicity.

PROBLEM, ADMINISTRATIVE REQUIREMENT, CONDITION, OR CIRCUMSTANCE ADDRESSED

Existing law requires school districts to inform parents of children attending school about the pesticides that will be used at the school and notify them when applications will take place. Existing law also requires each school within one quarter mile of agricultural land under production to create and maintain a school safety plan for the protection of public health. These requirements serve the purpose of protecting persons at the school from pesticides and providing advanced planning for incidents involving the public health.

Current agricultural use of non-restricted pesticides must be reported within 10 days of the end of the month in which the pesticide was applied. There is no requirement to provide advance notification of the application. In the event of an emergency caused by the drift of a pesticide, significant delays could occur in identifying the material used and impede appropriate responses.

Certain types of pesticide applications and pesticides have greater potential for impacting adjacent properties. The County Agricultural Commissioner does not have the authority to impose conditions on the use of non-restricted pesticides under existing laws and regulations.

The County Superintendent of Schools has requested the County Agricultural Commissioner take action to provide information about pesticide use adjacent to schools and to implement measures providing protection to children attending schools from the most likely sources of pesticide exposure. In order to do so, the San Bernardino County Agricultural Commissioner must adopt local regulations pursuant to the authority granted in Food and Agricultural Code sections 11503 and 11503.5.

SPECIFIC PURPOSE AND FACTUAL BASIS

Proposed regulatory text is in italics and followed by the factual basis in standard text.

Purpose and Authority.

The purpose of these regulations is to establish, pursuant to California Food and Agricultural Code sections 11503 and 11503.5, requirements on the agricultural use of pesticides on those persons engaged in commercial agriculture at sites adjacent to public and private school sites to protect the persons at the school sites from exposure to pesticides.

This regulation is proposed to provide clear reference for the authority and purpose of the subsequent regulations. While authority exists for regulating sites up to one quarter mile away from a school, the exposure risk in terms of the number of individuals involved greatly diminishes as the distance from the school increases. This regulation focuses its protections at the school sites where the greatest number of people are present.

Definitions.

For the purposes of this Chapter, the following words and phrases are defined and shall be construed as having the following meaning:

- a) "Department" shall mean the Department of Agriculture/Weights and Measures of the County of San Bernardino.*
- b) "Person" shall mean any person, firm, corporation, business or association.*
- c) "Commercial agriculture" shall mean any person engaged in the business of raising crops, nursery stock, animals or producing animal products for profit.*
- d) "Adjacent" shall mean sharing a common property line or point on the perimeter of the properties. Properties separated by a roadway or easement less than 100 feet wide shall be considered to be adjacent. Sub-lying parcels forming a single farming operation shall be considered as a single property; however, the requirement of this Chapter shall not extend to portions of an adjacent farming operation more than ¼ mile from the adjacent school.*
- e) "Pesticide" is as defined in Food and Agricultural Code section 12753.*
- f) "School site" shall mean any facility used as a child day care facility, as defined in Section 1596.750 of the Health and Safety Code, or for kindergarten, elementary, or secondary school purposes. The term includes the buildings or structures, playgrounds, athletic fields, vehicles, or any other area of the property visited or used by pupils.*

These definitions are necessary to clarify the terms used in the regulatory language and avoid ambiguity.

Notification Requirement.

- (1) Any person intending to apply a pesticide subject to this chapter shall provide notification to the Agricultural Commissioner no less than 24 hours prior to the start of the pesticide application. Notification may be made in person, by phone or by fax in the same manner as the notification for applying a restricted material.*
- (2) The date, time and method of the application, the pesticide to be applied, and the name of the adjacent school, day-care or pre-school shall be included the notification.*
- (3) The Agricultural Commissioner may forward all notifications received to the appropriate school district, pre-school or day-care center prior to the start of the application.*

This regulation imposes a requirement to notify the Agricultural Commissioner. By providing this information in advance, any emergency responders will not have a delay in obtaining information of the pesticide involved. In addition it provides an increased level of safety by

increasing the likelihood that a regulatory inspector will be on-site to monitor the pesticide application and ensure that the application is made in compliance with general pesticide use regulations.

Restrictions on Application Methods

The following restrictions on the method of application shall apply:

- (1) No pesticide shall be applied by aircraft to property subject to this chapter.*
- (2) Pesticides applied by powered equipment when the application is to foliage or trees higher than 36 inches from the ground and the spray is not directed perpendicular to the ground, may not be applied within one hour of the business hours of the adjacent school, pre-school or day-care center.*
- (3) Pesticides applied by a vector control agency or during a declared emergency are exempt from the restrictions on application methods.*

This regulation prohibits aerial application of a pesticide on property adjacent to a school. Aerial applications have the greatest potential of all methods for contaminating adjacent property.

Application methods involving powered equipment when the pesticides are not directed downward or are released relatively high above the ground have the next greatest potential for contaminating adjacent property. Restricting these methods of application to times when children are not at the school site or in transit to the school greatly reduces the risk of significant exposure.

Restrictions on Timing

No pesticide bearing the signal word "DANGER-POISON" shall be applied within one hour of the start or opening of the adjacent school, preschool or day-care center or within two hours of their closing.

Pesticides with the Danger-Poison signal word are highly toxic. Prohibiting their use when children are present at the school or in transit provides a significant risk reduction.

Exemptions

The following types of pesticides are exempt from the notification and application method requirements:

- (1) Pesticides bearing the signal word "CAUTION" on the product label unless the application method is by air or the spray is not directed downward.*
- (2) Rodent control pesticides placed below ground regardless of toxicity level.*
- (3) Pesticides bearing the signal word "WARNING" when applied using non-powered handheld or backpack sprayers.*
- (4) Pesticides applied within a structure such as a greenhouse if the ventilation of the structure is not directed towards the school site.*

This section provides general exemptions to the requirements based on the lower level of risk associated with these pesticides or application sites. These exemptions are necessary to allow for specific types of agricultural pest control application which pose little risk to adjacent property or people.

Violations

(a) Unless otherwise provided, any person violating any provision of this Chapter shall be guilty of an infraction or misdemeanor as hereinafter specified.

(b) Each day or portion thereof such violation is in existence shall be a new and separate offense.

(c) Any person so convicted shall be:

(1) guilty of an infraction and punished by a fine not exceeding two hundred dollars (\$200.00) and not less than one hundred dollars (\$100.00) for a first offense;

(2) guilty of a misdemeanor for the second and any additional offenses and punished by a fine not exceeding one thousand dollars (\$1,000.00) and not less than four hundred dollars (\$400.00) or six months in jail, or both.

(d) Notwithstanding the above, a first offense may be charged and prosecuted as a misdemeanor if the violation created a health hazard.

(e) Payment of any fine or service of a jail sentence shall not relieve a person from the responsibility of correcting the condition resulting from the violation.

(f) In addition to all other remedies provided by this Chapter or State law, in the event of continuing violation of the provisions of this Chapter, the Department may seek injunctive relief to restrain further violation.

(g) In lieu of criminal prosecution, the Department may impose a civil penalty pursuant to the provisions of California Food and Agricultural Code section 12999.5 and section 6130 of Title 3 of the California Code of Regulations with the penalty range commencing in 3CCR 6130(a)(1)(B).

This section provides a penalty matrix for violations of the regulations. The preferred method of addressing violations would be the imposition of a civil penalty since this is the simplest method for a respondent and is less-burdensome.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION

The San Bernardino CAC has considered alternatives that would lessen any possible adverse economic impacts, including impacts on small businesses, and has determined that the proposed regulatory action results in the least impact on businesses of all sizes. These alternatives have been incorporated into the exemptions listed in proposed regulations.

The proposed regulatory action is not anticipated to have a significant impact on business since alternatives to prohibited pesticides are available and current application methods will still be allowed; only the timing of the application has changed.

IDENTIFICATION OF ANY SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECT THAT CAN REASONABLY BE EXPECTED TO OCCUR FROM IMPLEMENTING THE PROPOSAL

A Notice of Exemption has been filed pursuant to California Code of Regulations, Title 14 Natural Resources, section 15308. The proposed regulations are exempted as a state certified regulatory program pursuant to California Code of Regulations, Title 14, Natural Resources, section 152519(i)(3) and (4).

EFFORTS TO AVOID UNNECESSARY DUPLICATION WITH FEDERAL REGULATIONS

The proposed regulatory action does not duplicate or conflict with federal regulations because there are no federal regulations contained within the Code of Federal Regulations which address this issue.

DOCUMENTS RELIED UPON

Assembly Bill 947 (Jackson) 2001-02

Pesticide Drift, Washington Toxics Coalition

The Schooling of State Pesticide Laws – 2002 Update, National Coalition Against the Misuse of Pesticides

Pesticides in Children, Pediatric clinics of North America

Acute Illnesses Associated with Pesticide Exposure at Schools, Journal of the American Medical Association, Volume 294, No. 4

Exposures of Children to Organophosphate Pesticides and Their Potential Adverse Health Effects, Environmental Health Perspectives Supplements, Volume 107, Number S3

Cancer in Children and Pesticide Exposure- Summary of Selected Studies, September 2002, Pesticide Education Center

Pesticides in the Diets of Infants and Children, National Research Council, 1993

Pesticides Lurk in Daycare Centers, Environmental Science and Technology Online News, Sept. 6, 2006

Assessing Health Risks from Pesticides, US EPA Fact Sheet, April 5, 2007

Protecting Children from Pesticides, US EPA Fact Sheet, January 2002

Correspondence from San Bernardino County Superintendent of Schools, August 31, 2007

Pesticide Use Reports, June and July 2007, DLT Growers

Farming Near Schools: A Community Based Approach for Protecting Children, Ventura County Ag Futures Alliance, Issue Paper No.1, 2002

Correspondence from The Planning Center, Risk Assessment for Chino Early Education Center, July 18, 2007

A Community Guide to Recognizing and Reporting Pesticide Problems, California

Department of Pesticide Regulation, pages 13-18, April 2008